IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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ORDER

Rajasthan State Hotel Corporation & Anr.
vs
The Judge, Industrial Tribunal-cum-Labour Court Udaipur & Ors.

S.B. CIVL WRIT PETIITON NO.1726/2004 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER : 1st August, 2006

PRESENT

HON'BLE MR.MOHAMMAD RAFIQ,J.

Mr.Harish Purohit, Advocate, for the petitioners.
Mr.Praveen Choudhary, for the respondents.

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BY THE COURT: -

The petitioners in the writ petition have challenged the award dated 20.5.2003 (Annex.6) passed by the learned Industrial Tribunal-cum-Labour Court, Udaipur (in short the learned labour court).

Briefly stated facts of the case are that the appropriate Government by a notification dated 20.12.2000 made a reference to the learned labour court, Udaiur for adjudication of an industrial dispute to the effect that whether the removal of the workman Raju Harijan (appointed in August, 1981 and removed in May, 1999) by the management is legal and justified and if not, what relief the concerned workman is entitled.

The petitioners came out with the case that the respondent-workman was appointed on 1.9.1981 in their service as houseman in Hotel Anand Bhawan, Rajasthan State Hotel Corporation, Udaipur. On 25.9.1998 a charge-sheet was issued to the respondent-workman on allegation of unauthorized absence from duties for a period of 125 days. The inquiry officer conducted the inquiry and found the respondent-workman guilty of remaining absent unauthorizedly and, therefore, vide order dated 25/31.5.1999, the respondent-workman was removed from service. The learned labour court vide order dated 7.2.2002, while examining the question of fairness of the inquiry conducted by the management held that the inquiry

was conducted in just and fair manner. However, the learned labour court vide award dated 20.5.2003 answered the reference holding that the punishment of removal imposed upon the respondent-workman vide order dated 25.6.1999 is disproportionate and, therefore, the learned labour court ordered to reinstate him in service with 50% of back wages from the date of his removal i.e., on 25.6.1999 to the date of reinstatement.

I have heard learned counsel for the parties and perused the record.

This Court while admitting the writ petition on 23.4.2004 stayed the part of the award directing that if the petitioner reinstates the workman then payment of back wages shall remain stayed. It is reported that respondent-workman has already been reinstated in service.

I do not find any error in approach of the learned labour court in holding that for willful absence of 125 days, penalty of removal was too excessive and harsh particularly in view of long

service of 18 years rendered by the respondent-workman. However, in the facts and circumstances of the case, the ends of justice would be served by directing that petitioner to impose penalty of stoppage of one grade increment with cumulative effect and pay entire back wages. I do not agree with the view taken by the learned labour court that withholding part of the wages can be treated as penalty as the reinstatement of the respondent-workman is the consequence of the award passed by the learned Labour Court and grant of back wages for the intervening period could always depend upon the discretion of the court passing such award. If the part or whole of the back wages are not paid to the workman under such award, this is on its own cannot be treated as penalty.

In view of the above, the learned labour court has committed error to the extent of not awarding any penalty to the respondent-workman. Even though, the penalty of removal for willful absence of 125 days which according to the evidence produced in the present case has been found to be not continuous of 125 days, but in different spells when the respondent-workman absented from

duties on different occasions and later on produced medical certificates of his own and his family members citing one or the other reasons of absence.

Hence, the writ petition is disposed of with the direction to the petitioner to impose penalty of stoppage of one grade increment with cumulative effect and the respondent-workman is held entitled to payment of entire back wages from the date of his removal till the date of his reinstatement.

No order as to costs.

(MOHAMMAD RAFIQ), J.

c.p.goyal/-